

HOUSE No. 2247

By Mr. Smizik of Brookline, petition of Frank I. Smizik and others for legislation to regulate the medical use of marijuana by patients approved by physicians and certified by the Department of Public Health. Public Health.

The Commonwealth of Massachusetts

PETITION OF:

Frank I. Smizik	Joyce A. Spiliotis
Alice K. Wolf	Patricia D. Jehlen
Byron Rushing	Cory Atkins
Barbara A. L'Italien	Ellen Story
Christine E. Canavan	Carl M. Sciortino, Jr.
Ruth B. Balser	Kay Khan

In the Year Two Thousand and Seven.

AN ACT TO REGULATE THE MEDICAL USE OF MARIJUANA BY PATIENTS APPROVED BY PHYSICIANS AND CERTIFIED BY THE DEPARTMENT OF PUBLIC HEALTH.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 34 of Chapter 94C is amended in the fourth
2 paragraph by inserting after the words, “is a patient certified to par-
3 ticipate in a therapeutic program described in ch. 94D,” the words, “,
4 or is a registered caregiver to a patient so certified as defined in
5 Section 1 of Chapter 94D,” and further amended by inserting after
6 the words “and possessed the marijuana for,” the words “the certi-
7 fied patient’s”.

1 SECTION 2. Section 1 of Chapter 94D is amended by adding the
2 following new definitions:—
3 “Registered caregiver,” a person at least 18 years old who has
4 agreed to undertake responsibility for assisting in the health care of a
5 patient with respect to the medical use of marijuana and who regis-
6 ters and is approved for this purpose by the Department of Public

7 Health (which approval shall not be unreasonably withheld by the
8 agency).

9 “Personal medical use,” is an amount of marijuana that is not
10 more than is reasonably necessary to ensure the uninterrupted avail-
11 ability of marijuana, for the purpose of alleviating the symptoms or
12 effects of the certified patient’s medical condition for which he or
13 she has been certified to use marijuana, and shall be presumed to be
14 not more than four ounces of dried, useable, cannabis, and no more
15 than ten plants, four of which can be mature (flowering).

1 SECTION 3. Section 2 of Chapter 94D is amended by adding the
2 following new paragraph:—

3 A physician shall not be subject to arrest or prosecution, penal-
4 ized in any manner, or denied any right or privilege for providing
5 written certification for the medical use of marijuana to patients who
6 qualify based on his or her clinical judgment.

1 SECTION 4. Section 2 of Chapter 94D is amended by striking
2 after the word “cancer” appearing in the first sentence of the existing
3 section, the words, “chemotherapy and radiation therapy, in
4 decreasing intraocular pressure in glaucoma patients, and in
5 decreasing airway resistance in asthmatics.” and, inserting in place
6 of the foregoing stricken words, the words, “and its treatment, the
7 condition or symptoms of glaucoma, asthma, positive status for
8 human immunodeficiency virus, acquired immune deficiency syn-
9 drome or the treatment of the following conditions:—

10 A chronic or debilitating disease or medical condition or its treat-
11 ment that produces one or more of the following:— cachexia or
12 wasting syndrome; severe pain; severe nausea; seizures, including
13 those characteristic of epilepsy; or severe and persistent muscle
14 spasms, including those characteristic of multiple sclerosis or
15 Crohn’s disease; or any other medical condition or its treatment
16 approved by a patient’s doctor in the exercise of his or her profes-
17 sional judgment.

1 SECTION 5. Section 2 of Chapter 94D is amended by inserting
2 after the words “whom a physician has certified” in the second para-
3 graph, the words “on a form approved by the Department of Public
4 Health” and further amended, by striking the words, “the

5 following:— that the patient is threatened by loss of life or sight, or
6 asthmatics who experience severe respiratory problems of discom-
7 fort; that the patient is not responding to or has incurred severe side
8 effects from the administration of conventional controlled sub-
9 stances,” which follow the words “Public Health” inserted above;
10 and inserting in place of the foregoing stricken words, the words,
11 “that the use of marijuana may alleviate the symptoms or effects of
12 their medical condition as described in the preceding paragraph;”

1 SECTION 6. Section 2 of Chapter 94D is amended by striking in
2 its entirety the third paragraph, and replacing the stricken paragraph
3 by inserting the following paragraph:—

4 “The Department shall contract with the national institute on drug
5 abuse, the national cancer institute or any other manufacturer, dis-
6 tributor or analytical laboratory for the receipt of analyzed marijuana
7 for distribution to patients upon the written certification of a physi-
8 cian. If the Department is unable to provide physician certified
9 patients with marijuana in a timely and effective manner from the
10 foregoing sources (but not later than six months after the effective
11 date of this amendment), and prior to the review and approval of any
12 study protocol pursuant to the therapeutic research program by an
13 Institutional Review Board in accordance with the provisions of 45
14 CFR part 46 and 21 CFR part 56, those patients or their caregivers
15 may participate in the program by growing indoors in a locked
16 facility or otherwise obtaining marijuana for the patient’s own per-
17 sonal use in an amount consistent with personal medical use, that is
18 not more than is reasonably necessary to ensure the uninterrupted
19 availability of marijuana for the purpose of alleviating the symptoms
20 or effects of the certified patient’s medical condition for which he or
21 she has been certified to use marijuana.”

1 SECTION 7. Section 3 of Chapter 94D is amended by inserting
2 after the words “The department shall approve participation in the
3 program” appearing in the second sentence of the existing section,
4 the words, “and issue identification cards to certified patients and
5 registered caregivers. Such approvals and issuance of cards shall not
6 be unreasonably withheld or delayed by the agency. A certified
7 patient or registered caregiver who has in his or her possession an
8 identification card issued by the agency shall not be subject to arrest,

9 prosecution or other penalty for the cultivation, possession or use of
10 marijuana, provided the quantity of marijuana in the certified patient
11 or registered caregiver's possession does not exceed the "reasonably
12 necessary" amount for personal medical use described in Section 1
13 of Chapter 94D."

1 SECTION 8. Section 32C of Chapter 94C is amended by adding
2 the following new paragraph:—

3 "(c) It shall be a *prima facie* defense to any charge under this
4 section that the defendant is a patient certified to participate in a
5 therapeutic research program described in Chapter 94D, or is a regis-
6 tered caregiver to a patient so certified, and possessed the marijuana
7 for the certified patient's personal use pursuant to such program."